IN THE HIGH COURT OF HIMACHAL PRADESH, SHIMLA.

CWP No.226/2007

Reserved on.10.7.2007

Decided on.23.8.2007

National Insurance Company. …Petitioner.

Versus

MACT (Fast Track Court), Shimla and others. …Respondents

Coram

The Hon'ble Mr. Rajiv Sharma, J.

Whether approved for reporting ?[1]. No.

For the petitioner : **Mr. Ashwani K. Sharma, Advocate.**

For the respondents **Mr. J.L. Bhardwaj, Advocate with Mr. Raj Kumar Negi, Advocate for respondents No.2 to 4.**

Mr. Goverdhan Sharma, Advocate for respondent No.5.

Rajiv Sharma, J.

A challenge has been laid by the petitioner-company to the award passed by the Motor Accident Claims Tribunal (Fast Track Court), Shimla in MACT No. 71-S/2 of 2005/2004 dated 8th August, 2006.

The brief facts necessary for the adjudication of this petition are that Smt. Durga Devi along with her husband Sh. Narain Dass was travelling in a car No.HP-35-0336 on 20.7.2004 being driven by Sh. Ranbir Singh. The car met with an accident in which Smt. Durga Devi, Narain Dass and the driver Ranbir Singh died. The claimants being minor had filed the claim petition before the MACT through their grand-father and natural guardian Sh. Budh Ram claiming Rs. Eight lakhs for the death of their mother Smt. Durga Devi. The MACT on the basis of the pleadings of the parties had framed the following issues:

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[1] ***Whether the reporters of Local Papers may be allowed to see the judgment***? No.

1. **Whether Durga Devi died as a result of rash and negligent driving of the driver of Maruti Car No.HP-35-0336 on 20.7.2004? OPP**
2. **To what compensation petitioners are entitled and from whom? OPP**
3. **Whether petition is bad for non-joinder of necessary parties? OPR.**
4. **Relief.**

The MACT had recorded the following findings on the issues framed:

1. **Yes.**
2. **Rs. 6,29,500/- and Insurance Co. is liable.**
3. **No.**
4. **Petition allowed**.

The learned MACT on the basis of the evidence led by the parties had awarded a sum of Rs. 6,29,500/- to the claimants vide award dated 8th August, 2006.

Mr. Ashwani K. Sharma, Advocate appearing on behalf of the petitioner-company had strenuously argued that since excessive sum of Rs. 6,29,500/- has been paid to the claimants by way of award it is perverse and liable to be interfered by this Court. He had contended that the proper multiplier has not been applied.

Mr. J.L. Bhardwaj, Advocate had supported the award dated 8.8.2006 and had strenuously contended that there is no perversity in the award and the same is liable to be upheld by the Court.

I have heard the learned counsel for the parties and perused the record.

The age of deceased Durga Devi at the time of accident was 32 years. As per claim petition, Durga Devi was earning Rs. 5,000/- from tailoring. The MACT had not accepted a sum of Rs. 5,000/- as income of

deceased Durga Devi. The MACT after considering the judgment rendered by this Court in ***Sher Singh and another Versus Raghubir Singh and others,*** 2005 (2) Latest HLJ (HP) 1289 had arrived at the correct figures of Rs. 3,000/- as income of deceased Durga Devi. The compensation awarded towards the loss of love and affection, loss of estate and funeral charges cannot be held to be excessive. The MACT after arriving at the figures of Rs. 3,000/- had applied the proper multiplier of 17 thereon. The MACT has taken into consideration the correct principles of awarding compensation in case of death of mother. The multiplier has been applied by the MACT by taking into consideration the age of the claimants as well as the deceased.

A Division Bench of this Court has held in ***New India Assurance Company Versus Prem Chand and others***, 2007 (2) SLJ (HP) 1333 that merely because the award is high or excessive would not make the award perverse. Their Lordships have held as under:

> **"We are of the considered view that if a Tribunal passes an award by totally ignoring the legal position as laid down by this High Court under whose jurisdiction it falls or by the Apex Court, then the award can be said to be perverse. Merely because the award is high or excessive would not make the award perverse. However, if the Tribunal totally ignores the basic principles of law and acts in total violation of the principles relating to the grant of compensation then the award must be held to be perverse. Keeping in view the aforesaid principles of law, we proceed to decide the present case."**

The award passed by the learned MACT is within the legal parameters laid down by this Court and the same cannot be termed as perverse.

Accordingly there is neither any jurisdictional error nor any procedural irregularity in the award passed by the MACT dated 8.8.2006.

Consequently, there is no merit in the writ petition and the same is dismissed with no order as to costs.

(Rajiv Sharma), Judge

August 23, 2007
Awasthi